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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

4 v.

19 CR 536 (PKC)

5 JASON MARTINEZ,

6 Defendant.

7 -----x

8 New York, N.Y.

9 July 21, 2021

4:53 p.m.

10 Before:

11 HON. P. KEVIN CASTEL,

District Judge

12 APPEARANCES

13 AUDREY STRAUSS

14 United States Attorney for the  
15 Southern District of New York

16 BY: JULIANA NEWCOMB MURRAY

KAYLAN LASKY

Assistant United States Attorneys

17 ANTHONY J. POPE

18 JOHN BUZA

Attorneys for Defendant

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(In open court)

(Case called)

MS. MURRAY: Good afternoon, your Honor. Juliana Murray and Kaylan Lasky on behalf of the United States.

THE COURT: Good afternoon to both of you.

And for the defendant?

MR. POPE: Anthony Pope, your Honor, on behalf of the defendant -- good afternoon -- along with -- counsel?

MR. BUZA: John Buza. Good afternoon, your Honor.

THE COURT: Mr. Buza, I'm going to thank you for participating, and I'm going to direct my deputy to prepare an order, which I will sign, to make sure that you're appointed for pretrial purposes in this case pursuant to the Criminal Justice Act. You enjoy the thanks of the Court.

So, Mr. Martinez, I understand you wish to enter a guilty plea today; is that correct?

THE DEFENDANT: Yes.

THE COURT: Before I can accept that guilty plea, I must be satisfied that you understand the rights you would have if this case went to trial and the rights you're giving up by pleading guilty.

Also, I must be satisfied that you understand the consequences of pleading guilty and that there's a factual basis for your plea of guilty. In a moment my deputy is going to place you under oath and I'm going to ask you certain

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1 questions, inform you of certain rights.

2 If I ask you something or I tell you something and you  
3 don't quite understand, please let me know and I'll put it into  
4 different words.

5 Also, if at any point today you wish to speak in  
6 private with Mr. Pope or with Mr. Buza, I'll give you an  
7 opportunity to do so.

8 Do you understand all of that?

9 THE DEFENDANT: Yes.

10 THE COURT: All right. Madam Deputy.

11 (Defendant sworn)

12 THE COURT: All right.

13 Mr. Martinez, you're now under oath, and your answers  
14 to my questions are subject to the penalty of perjury or making  
15 a false statement if you do not answer truthfully. Also,  
16 anything you say in this proceeding may be used in any such  
17 prosecution. Do you understand that?

18 THE DEFENDANT: Yes.

19 THE COURT: How old are you, Mr. Martinez?

20 THE DEFENDANT: Thirty-nine.

21 THE COURT: And how far did you go in school?

22 THE DEFENDANT: Eleventh grade.

23 THE COURT: And are you now, or have you recently  
24 been, under the care of a medical doctor?

25 THE DEFENDANT: No.

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1 THE COURT: Have you ever been treated for mental  
2 illness?

3 THE DEFENDANT: Yes.

4 THE COURT: What condition?

5 THE DEFENDANT: It was when I was young.

6 THE COURT: Okay. Did you take any medications for  
7 it?

8 THE DEFENDANT: Yeah; I don't remember what it was  
9 though.

10 THE COURT: Okay. Do you take any medications now?

11 THE DEFENDANT: Yeah.

12 THE COURT: What do you take?

13 THE DEFENDANT: Zoloft.

14 THE COURT: All right. And when was the last time you  
15 took Zoloft?

16 THE DEFENDANT: Yesterday morning.

17 THE COURT: All right. Well, is your mind clear  
18 today?

19 THE DEFENDANT: Yes.

20 THE COURT: Do you understand what's happening?

21 THE DEFENDANT: Yes.

22 THE COURT: Do you suffer from any addictions?

23 THE DEFENDANT: No.

24 THE COURT: Okay. All right.

25 Mr. Pope, any doubts as to defendant's competence to

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1 proceed?

2 MR. POPE: No, your Honor.

3 THE COURT: All right. Based upon responses to my  
4 questions and my observations, I find Mr. Martinez is fully  
5 competent to proceed.

6 Now, have you discussed the charges in the indictment  
7 and the evidence underlying those charges with your lawyer?

8 THE DEFENDANT: Yes.

9 THE COURT: Have you had enough time to consider all  
10 of your options in this case?

11 THE DEFENDANT: Yes.

12 THE COURT: Reflecting on the entirety of matters, are  
13 you satisfied with your lawyer's representation of you?

14 THE DEFENDANT: Yes.

15 THE COURT: And did you have a chance to meet with  
16 Mr. Buza today?

17 THE DEFENDANT: Yes.

18 THE COURT: And did you ask him any questions?

19 THE DEFENDANT: Yes, I did.

20 THE COURT: And did he answer them to your  
21 satisfaction?

22 THE DEFENDANT: Yes.

23 THE COURT: All right. Thank you.

24 I'm now going to explain to you the rights that you  
25 would have if this case proceeded to trial and the rights

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1 you're giving up by pleading guilty.

2 Under the Constitution and laws of the United States,  
3 you're entitled to a speedy and public trial before an  
4 impartial jury on the charges contained in the indictment. At  
5 such a trial, you would not have to prove you were innocent,  
6 the government would be required to prove each element of each  
7 crime by proof beyond a reasonable doubt.

8 Before a jury could find you guilty, a jury of 12  
9 people would have to agree unanimously that you were guilty.

10 Do you understand all that?

11 THE DEFENDANT: Yes.

12 THE COURT: If there were such a trial, you would be  
13 entitled to be represented by counsel, and if you could not  
14 afford counsel, one would be appointed at public expense.

15 Do you understand that?

16 THE DEFENDANT: Yes.

17 THE COURT: If there were a trial, the witnesses for  
18 the government would have to come to court to testify. You  
19 would be able to see and hear them. Your lawyer could question  
20 them through cross-examination. Your lawyer could object to  
21 evidence offered by the government. Your lawyer could present  
22 evidence and could ask the Court to compel witnesses to appear  
23 at trial on your behalf.

24 Do you understand that all that?

25 THE DEFENDANT: Yes.

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1 THE COURT: If there were such a trial, you would have  
2 the right to testify if you chose to do so. You could come up  
3 here and take the witness stand. Also, you would have the  
4 right not to testify and no one would be permitted to draw any  
5 inference or suggestion of guilt from the fact that you decided  
6 not to testify.

7 Do you understand all that?

8 THE DEFENDANT: Yes.

9 THE COURT: If there were a trial and the jury found  
10 you guilty, you would have the right to appeal that finding.

11 Do you understand that?

12 THE DEFENDANT: Yes.

13 THE COURT: Now, those are the rights you would have  
14 if the case proceeded to trial. If I accept a guilty plea from  
15 you, there will be no trial. You will proceed to the  
16 sentencing phase, in which the Court will determine the  
17 punishment to be imposed upon you. Even now, you have the  
18 right to change your mind; instead of pleading guilty, you may  
19 plead not guilty and go to trial.

20 Do you wish to plead not guilty and go to trial?

21 THE DEFENDANT: No.

22 THE COURT: Do you understand that Count Three of the  
23 superseding indictment charges you with conspiracy to commit  
24 Hobbs Act robbery? Do you understand that?

25 THE DEFENDANT: Yes.

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1 THE COURT: Do you understand that Count Three carries  
2 a maximum term of imprisonment of 20 years, a maximum term of  
3 supervised release of three years, a maximum fine of the  
4 greatest of \$250,000 or twice the gross pecuniary or monetary  
5 gain derived from the offense or twice the gross pecuniary loss  
6 to persons other than yourself resulting from the offense, and  
7 a \$100 mandatory special assessment?

8 Do you understand all that?

9 THE DEFENDANT: Yes.

10 THE COURT: Count Six of the superseding indictment  
11 charges you with conspiracy to distribute and possess with  
12 intent to distribute five kilograms and more of mixtures and  
13 substances containing a detectable amount of cocaine. Count  
14 Six carries a maximum term of imprisonment of life, a mandatory  
15 minimum term of ten years imprisonment, a maximum term of  
16 supervised release of life, a mandatory minimum term of  
17 supervised release of five years, a maximum fine of the  
18 greatest of \$10 million or twice the gross pecuniary gain  
19 derived from the offense or twice the gross pecuniary loss to  
20 persons other than yourself resulting from the offense, and a  
21 \$100 mandatory special assessment.

22 Mr. Pope, is your client prepared to admit the  
23 forfeiture allegations in the superseding indictment?

24 MR. POPE: Your Honor, I don't have a copy of them.

25 THE COURT: We'll get them for you. I have it right

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1 here.

2 MR. POPE: I thought we were going to address that at  
3 sentencing.

4 THE COURT: But today would be the day, customarily,  
5 that somebody would admit the allegations, and then the amount  
6 of the forfeiture would be determined at --

7 MR. POPE: At a later time, right.

8 THE COURT: -- at sentencing, at a later time.  
9 They're at paragraphs 14 and 16.

10 (Defendant conferring with counsel)

11 THE DEFENDANT: Yes.

12 MR. POPE: Yes, your Honor. Thank you.

13 THE COURT: All right. Thank you very much.

14 With respect to supervised release, there are terms  
15 and conditions attached to it, and if you do not live up to  
16 those terms and conditions, you can be returned to prison for  
17 the full period of supervised release. So, say you receive a  
18 prison term to be followed by a term of three years of  
19 supervised release, and you live up to the terms of the  
20 supervised release for two years but then you violate one of  
21 the terms, you can be returned to prison for a full period of  
22 three years.

23 Do you understand that?

24 THE DEFENDANT: Yes.

25 THE COURT: All right.

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Are you a U.S. citizen?

THE DEFENDANT: Yes.

THE COURT: Among the consequences of pleading guilty are that you give up valuable civil rights, such as the right to vote, to sit on a jury, to hold public office, to possess a firearm, to hold certain other licenses, and to receive certain government benefits.

Do you understand all that?

THE DEFENDANT: Yes.

THE COURT: Are you serving any other sentence, state or federal, or being prosecuted in any other court for any other crime?

THE DEFENDANT: No.

THE COURT: In sentencing you, I will receive a presentence report prepared by the office of probation that will give me background information and a recommended range of sentence under the sentencing guidelines.

After hearing from your lawyer and from the government, I will make my own determination of the correct guideline range. Even after deciding the correct guideline range, I need not sentence you within that range. I can sentence you all the way up to the statutory maximum or all the way down to a mandatory minimum.

The guidelines are advisory, and they are one of the factors that the Court takes account of in passing sentence

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1 upon you under a statute that is commonly known as Section  
2 3553(a).

3 Do you understand that?

4 THE DEFENDANT: Yes.

5 THE COURT: Now, I understand there is a plea  
6 agreement entered into between you and the government, and it's  
7 reflected on an eight-page document, on the letterhead of the  
8 Department of Justice, dated July 19, addressed to Anthony  
9 Pope. I'm going to ask the clerk to place that document in  
10 front of you. Take a look at it.

11 Is that your signature on the last page?

12 THE DEFENDANT: Yes.

13 THE COURT: Is that your plea agreement with the  
14 government?

15 THE DEFENDANT: Looks like it. Yes.

16 THE COURT: All right. Did you read it before you  
17 signed it?

18 THE DEFENDANT: Yes.

19 THE COURT: Did you discuss it with Mr. Pope before  
20 you signed it?

21 THE DEFENDANT: Yes.

22 THE COURT: Did you discuss it with Mr. Buza before  
23 you signed it?

24 THE DEFENDANT: Yes.

25 THE COURT: Did you understand it before you signed

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1 it?

2 THE DEFENDANT: Yes.

3 THE COURT: Has anyone threatened you or forced you in  
4 any way to enter into the plea agreement or to plead guilty?

5 THE DEFENDANT: No.

6 THE COURT: Has anyone given you anything of value or  
7 promised you anything, in order to get you to enter into the  
8 plea agreement or to plead guilty?

9 THE DEFENDANT: No.

10 THE COURT: Does the plea agreement contain all of  
11 your understandings with the government?

12 THE DEFENDANT: Yes.

13 THE COURT: I want you to know that any prediction,  
14 calculation, or estimate that anyone has made to you as to what  
15 sentence I might give you is not binding on me, not binding on  
16 the Court, and if it turns out to be wrong, you will not be  
17 permitted to withdraw your guilty plea.

18 Do you understand all that?

19 THE DEFENDANT: Yes.

20 THE COURT: Now, one of the features of your plea  
21 agreement is that you and the government have agreed on a  
22 stipulated guideline range, and, in fact, that stipulated  
23 guideline range of imprisonment is 210 to 262 months of  
24 imprisonment, with a mandatory minimum term of imprisonment of  
25 120 months.

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1 Is that correct, sir?

2 MR. POPE: Your Honor, I just want to be clear because  
3 Mr. Martinez and I went over this, and just so we're clear, may  
4 I speak to him, Judge?

5 THE COURT: You may.

6 MR. POPE: Mr. Martinez, I explained to you what the  
7 guideline number is, correct?

8 THE DEFENDANT: Yes.

9 MR. POPE: And I also told you that you were allowed,  
10 you're being allowed under the plea, to proffer under the  
11 safety valve on the drug offense and, if appropriately done,  
12 you would no longer have a mandatory minimum on that, is that  
13 correct?

14 THE DEFENDANT: Yes.

15 MR. POPE: Okay. And I told you that --

16 THE COURT: Now, let me just pause.

17 Ms. Murray, do you agree?

18 MS. MURRAY: Your Honor, I do agree that the defendant  
19 is eligible on Count Six to come in for a proffer under the  
20 First Step Act.

21 So, assuming that the defendant does engage in that  
22 proffer to the satisfaction of the government, then, yes, I  
23 think that that relief would apply.

24 THE COURT: Thank you.

25 Go ahead, Mr. Pope. I'm sorry I interrupted you.

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1 MR. POPE: And that there are no mandatory minimums on  
2 Count Three, I told you that as well, correct?

3 THE DEFENDANT: Yes.

4 MR. POPE: And that we are allowed under the plea  
5 agreement to argue factors under 3553 that could vary or  
6 deviate from that guideline range as it relates to those  
7 factors, correct?

8 THE DEFENDANT: Correct.

9 MR. POPE: Okay.

10 THE COURT: And, Ms. Murray, you agree?

11 MS. MURRAY: Yes, your Honor.

12 THE COURT: Okay. Thank you.

13 MR. POPE: Thank you. I just want to -- you know, for  
14 somebody who's never done it before, it's not that easy to  
15 understand?

16 THE DEFENDANT: No, it just says 168 to 210, and he's  
17 saying 210 to --

18 MR. POPE: It's 168 to 205 or 210. That's the number  
19 of the guideline range.

20 THE COURT: Well, no --

21 MR. POPE: Your Honor was saying without the two  
22 points for safety valve. You understand that? The safety  
23 valve then drops it down from a 36 to a 34, and the 34, under  
24 the guideline range, in a category II, if you're a category II,  
25 is 168 to 205.

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1 THE DEFENDANT: 210.

2 MR. POPE: Or 210, yes.

3 THE COURT: But the agreement with the government is a  
4 stipulated guideline range of 210 to 262 months. That's what I  
5 understand from the plea agreement.

6 I also understand that the defendant is going to  
7 proffer for the safety valve, and the guideline range – not the  
8 stipulated guideline range, but the guideline range – could be  
9 lower; and you're correct, if there is no mandatory minimum,  
10 the Court can vary up or down from the guideline range.

11 MR. POPE: Correct.

12 THE COURT: That is all correct. But there is an  
13 agreement of a term which is called the stipulated guideline  
14 range of 210 to 262. The reason I say that is because the  
15 government has agreed that if I sentence you within the  
16 stipulated guideline range of 210 to 262 months' imprisonment,  
17 that they will not appeal the sentence.

18 MR. POPE: That is correct.

19 THE COURT: Okay. It's not a question; I'm informing  
20 your client --

21 MR. POPE: Oh, I'm sorry.

22 THE COURT: -- of his rights.

23 By the same token, the government agrees that if I  
24 sentence you within the stipulated guideline range in the plea  
25 agreement, of 210 to 262 months' imprisonment, or below that

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1 range, that the defendant will not appeal or collaterally  
2 attack the sentence.

3 In other words, the defendant waives his right to  
4 appeal or collaterally attack the sentence unless it is above  
5 the guideline range of 210 to 262 months' imprisonment; and in  
6 that event, the law will only allow him to appeal on the basis  
7 that the sentence is unreasonable or contrary to law.

8 Do you understand that, Mr. Martinez?

9 THE DEFENDANT: Yeah, that's not what I was told.

10 THE COURT: All right. Well, let's talk this all out.

11 So, that's what your plea agreement provides.

12 MR. POPE: I think Mr. Martinez is understanding this,  
13 and I explained it to him, that your Honor, with no mandatory  
14 minimum, pursuant to factors of 3553 that could be presented,  
15 by me to the Court, can go as low as you choose to.

16 THE COURT: If he qualifies for the safety valve --

17 MR. POPE: Right.

18 THE COURT: If he qualifies for the safety valve, the  
19 court can sentence him below the guidelines.

20 MR. POPE: Right.

21 THE COURT: There is no mandatory minimum if he  
22 qualifies for the safety valve. That doesn't change the term  
23 of the agreement, which provides the stipulated guideline  
24 range, because if you look at the appeal waiver in the plea  
25 agreement, it relates to the stipulated guideline range.

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1 That's the way the plea agreement works.

2 MR. POPE: Yes, your Honor, but it also allows me to  
3 argue 3553 factors.

4 THE COURT: Right now, I am focusing on what is  
5 commonly referred to as the appeal waiver provision. Do you  
6 understand?

7 MR. POPE: Mr. Martinez, if the Court, in spite of  
8 everything that's presented, decided that they do not want to  
9 go below the guideline range or they want to go above the  
10 guideline range, I told you this, the Court could do that. The  
11 benefit -- and what you are pleading to is a plea, which, if  
12 you get if the safety valve, two points, puts you in a position  
13 where there are no mandatory minimums.

14 Do you understand that?

15 THE DEFENDANT: Yes.

16 MR. POPE: However, if the Court were to sentence you  
17 to -- let's assume you don't get the -- I don't want to do that  
18 because it's going to confuse things more.

19 Two ways you get the safety valve: One, the  
20 government agrees -- and we've talked about the conditions  
21 under which you can get that.

22 THE COURT: Listen, Mr. Pope, you're welcome to do  
23 this. You can take a moment and speak to your client.  
24 Mr. Buza can speak to your client.

25 MR. POPE: Okay.

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1 THE COURT: You're welcome to talk to him, but I think  
2 at the end of the day, I'm going to explain how I, the judge,  
3 construe this, and I want to make sure that he understands it  
4 as I understand it. So, there's a difference -- well, I'll  
5 allow you to explain it and, Mr. Buza, if you want to --

6 MR. BUZA: Can I just have a moment with him?

7 THE COURT: You can, you absolutely can.

8 (Defendant conferring with counsel)

9 MR. BUZA: Thank you, Judge.

10 THE COURT: All right. Mr. Martinez, do you have any  
11 questions for me?

12 THE DEFENDANT: Yeah. I was confused about the 168 to  
13 210. He said it was going to be around that, not 210 to 268.

14 THE COURT: 262.

15 MR. POPE: That's under --

16 THE COURT: Let me see whether I can explain it to  
17 you.

18 In the agreement, it has the stipulated guideline  
19 range that applies, assuming there is no safety valve proffer  
20 to the government that is acceptable to them. The government  
21 decides, not me, whether you qualify for the safety valve.  
22 That's their determination.

23 If you qualify for the safety valve, then the  
24 stipulated guideline range of 210 to 260 months' imprisonment  
25 will not apply. In fact, I don't even know if that's the

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1 correct guideline range. It's not my guideline range. It's  
2 the guideline range in the plea agreement. I think I mentioned  
3 to you, I have my own obligation to determine the guideline  
4 range.

5 Now, I understand the government agrees that you can  
6 go in and make a safety valve proffer on Count Six, and that if  
7 they agree you've made a good safety valve proffer, then you  
8 have a different guideline range. I don't know what that is.  
9 I didn't do the calculation. That's what your lawyers have  
10 given you. I'm sure they're giving you good advice but that's  
11 not the plea agreement.

12 The plea agreement sets forth what happens if the  
13 safety valve proffer doesn't work. If the safety valve proffer  
14 doesn't work, there's a mandatory minimum of 120 months, and  
15 the overall stipulated guideline range is 210 to 262 months'  
16 imprisonment. That's not binding on me. That's an agreement  
17 between the parties.

18 And the agreement here provides that the government  
19 will not appeal, no matter what sentence I give. If you  
20 qualify for the safety valve, the government is simply agreeing  
21 that it will not appeal if the sentence is within 210 and 262  
22 or above that number.

23 And you're agreeing that you will not appeal or attack  
24 the sentence if it's within that range or below that range.  
25 That's the appeal waiver. That does not stop you and your

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1 lawyer from arguing for a different sentence or arguing for the  
2 safety valve, but you must understand that your plea agreement  
3 contains an appeal waiver, and the appeal waiver is as I've  
4 described it for you.

5 Do you understand?

6 THE DEFENDANT: A little bit. I'm not --

7 THE COURT: Okay.

8 MR. BUZA: If I may, your Honor?

9 THE COURT: Yes.

10 MR. BUZA: Thank you.

11 (Defendant conferring with counsel)

12 MR. BUZA: Thank you, Judge.

13 THE COURT: Okay. Do you have any questions,  
14 Mr. Martinez?

15 THE DEFENDANT: No.

16 THE COURT: Okay. So do you understand the waiver of  
17 the right to appeal under certain circumstances set forth in  
18 the plea agreement?

19 THE DEFENDANT: Yes, I understand.

20 THE COURT: Okay. All right. Let me ask the  
21 government to set forth for Mr. Martinez what the elements of  
22 the crime charged is and what, in summary, would be the  
23 government's evidence if the case went to trial.

24 And you should know, Mr. Martinez, on appeals, the  
25 appellate courts will only allow a person to appeal on the

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1 basis that a sentence is unreasonable or contrary to law. Do  
2 you understand?

3 THE DEFENDANT: Yes.

4 THE COURT: Okay. Go ahead.

5 MS. MURRAY: Thank you, your Honor.

6 In order to prove the defendant guilty of Count Three,  
7 the government would have to prove the following elements  
8 beyond a reasonable doubt:

9 First, that two or more persons entered into an  
10 unlawful agreement to commit a Hobbs Act robbery, as charged in  
11 the indictment;

12 And, second, that the defendant knowingly and  
13 willfully became a member of that conspiracy.

14 For a Hobbs Act robbery conspiracy, the elements are  
15 that:

16 The defendant obtained, or attempted to obtain,  
17 property from another without that person's consent;

18 That the defendant did so by wrongful use of actual or  
19 threatened force, violence or fear; and, as a result of the  
20 defendant's action, interstate commerce, or an item moving in  
21 interstate commerce, was actually or potentially delayed,  
22 obstructed, or affected in any way or degree.

23 Regarding the interstate commerce element, the  
24 government submits that cocaine is not manufactured in the  
25 State of New York; because it comes in from other states and/or

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1 countries, it passes through interstate commerce.

2 With respect to Count Six, the government would have  
3 to prove the following elements beyond a reasonable doubt --

4 THE COURT: Well, maybe we should take --  
5 Mr. Martinez, please tell me, in your own words, what you did  
6 that leads you to believe that you're guilty of the crime in  
7 Count Two.

8 MS. MURRAY: Three.

9 THE COURT: Three, I'm sorry, Count Three, conspiracy  
10 to commit Hobbs Act robbery.

11 THE DEFENDANT: One second?

12 THE COURT: Sure.

13 (Defendant conferring with counsel)

14 MR. POPE: Judge, could I have two minutes with the  
15 client?

16 THE COURT: Sure.

17 (Recess)

18 (Defendant conferring with counsel)

19 MR. POPE: Okay. Thank you, Judge.

20 THE COURT: You can come up if you want, Mr. Finkel.

21 MR. FINKEL: Thank you, your Honor.

22 THE COURT: So, Mr. Martinez, please tell me, in your  
23 own words, what leads you to believe that you're guilty of the  
24 crime charged in Count Three.

25 THE DEFENDANT: I conspired with others to commit

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1 Hobbs Act and steal the cocaine.

2 THE COURT: Okay. And this was when, approximately?

3 THE DEFENDANT: May 29th, 2019.

4 THE COURT: All right.

5 And, Mr. Pope, is there any basis to challenge the  
6 government's proffer on the cocaine traveling in interstate  
7 commerce?

8 MR. POPE: There is not, your Honor.

9 THE COURT: All right.

10 And where did this take place, Mr. Martinez?

11 THE DEFENDANT: In The Bronx.

12 THE COURT: Okay. And did you know what you were  
13 doing was wrong and unlawful?

14 THE DEFENDANT: Yes, I did.

15 THE COURT: All right.

16 Does the government agree there's a sufficient factual  
17 predicate for a plea to Count Three?

18 MS. MURRAY: Yes, your Honor.

19 THE COURT: Mr. Pope, do you agree?

20 MR. POPE: I do, your Honor, yes.

21 THE COURT: Mr. Buza, do you agree?

22 MR. BUZA: Yes, your Honor.

23 THE COURT: All right. With regard to Count Six, the  
24 government can make its presentation, please.

25 MS. MURRAY: Thank you, your Honor.

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1 In order to prove the defendant guilty of Count Six,  
2 the government would have to prove the following elements  
3 beyond a reasonable doubt:

4 First, that two or more persons entered into an  
5 unlawful agreement to distribute and possess with intent to  
6 distribute narcotics;

7 And, second, that the defendant knowingly became a  
8 member of the conspiracy.

9 The drugs alleged in Count Six are five kilograms and  
10 more of mixtures and substances containing a detectable amount  
11 of cocaine.

12 Additionally, the government would be required to  
13 prove by preponderance of the evidence that venue in this  
14 district is proper as to both counts.

15 THE COURT: And what would the government's proffer on  
16 venue be?

17 MS. MURRAY: Yes, your Honor.

18 With respect to Count Three, the robbery took place in  
19 The Bronx.

20 With respect to Count Six, the defendant traveled from  
21 his home, or the vicinity of his home, in The Bronx, New York,  
22 in his car to Florida for the purposes of purchasing another  
23 seven kilograms cocaine, and he traveled from The Bronx to  
24 Florida with approximately \$200,000 in his car that he was  
25 going to purchase the cocaine, most of which was concealed in

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1 an electronic trap.

2 THE COURT: How would you go about proving these two  
3 crimes?

4 MS. MURRAY: If we were to go to trial, our proof  
5 would include, but not be limited to: Witness testimony; cell  
6 phone toll analysis; cell phone location information;  
7 electronic data, including the contents of cell phones;  
8 cocaine, including the recovery of one kilogram of cocaine that  
9 had been the subject of the May 29th, 2019, robbery in The  
10 Bronx; lab reports of seized and recovered cocaine; law  
11 enforcement reports; undercover video surveillance of the  
12 defendant during the attempted seven-kilogram cocaine purchase  
13 in Florida, including video that shows the defendant bringing  
14 two bricks of apparent cocaine to his nose to sniff them; and  
15 bulk cash, both seized from the stash inside the defendant's  
16 car in May of 2020 and bulk cash seized from the defendant's  
17 stash house in The Bronx in or about November of 2019.

18 THE COURT: All right, Mr. Martinez, please tell me,  
19 in your own words what leads you to believe that you're guilty  
20 of Count Six of the superseding indictment.

21 THE DEFENDANT: I conspired with others to go down to  
22 Florida and buy cocaine.

23 THE COURT: All right. And when did this take place,  
24 approximately?

25 THE DEFENDANT: May 28th, 2020.

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1 THE COURT: All right. And you traveled from where to  
2 go to Florida?

3 THE DEFENDANT: From New York.

4 THE COURT: And did you bring the money with you to  
5 buy the cocaine from New York?

6 THE DEFENDANT: Yes.

7 THE COURT: And where in New York were you when you  
8 left with the money for Florida?

9 THE DEFENDANT: I was at home.

10 THE COURT: Where is home?

11 THE DEFENDANT: In The Bronx, New York.

12 THE COURT: Okay, thank you. Did you know what you  
13 were doing was wrong and unlawful?

14 THE DEFENDANT: Yes.

15 THE COURT: All right.

16 Does the government agree there's a sufficient factual  
17 predicate for a plea to Count Six?

18 MS. MURRAY: Yes, your Honor.

19 THE COURT: Mr. Pope?

20 MR. POPE: Yes, your Honor.

21 THE COURT: Mr. Buza?

22 MR. BUZA: Yes, your Honor.

23 MS. MURRAY: Your Honor, apologies, just one note with  
24 respect to the defendant's allocution. We would just ask that  
25 the Court inquire as to the amount of cocaine that he

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1       conspired --

2               THE COURT:   Thank you.   And the amount of cocaine with  
3       regard to Count Six -- oh, no, I'm sorry.   What type of drug  
4       was it in Count Six?

5               THE DEFENDANT:   Cocaine.

6               THE COURT:   And what was the quantity?

7               THE DEFENDANT:   Five or more.

8               THE COURT:   Five or more what?

9               THE DEFENDANT:   Kilograms.

10              THE COURT:   Okay.   And what you have told me about  
11       both crimes, is that the truth?

12              THE DEFENDANT:   Yes.

13              THE COURT:   Okay.   The government agrees there's a  
14       sufficient factual predicate now?

15              MS. MURRAY:   Yes.   Thank you, your Honor.

16              THE COURT:   Okay.   All right.

17              Mr. Martinez, do you have any questions for me?

18              THE DEFENDANT:   No.

19              THE COURT:   Okay.   With regard to Count Three, how do  
20       you plead, guilty or not guilty?

21              THE DEFENDANT:   Guilty.

22              THE COURT:   With regard to Count Six, how do you  
23       plead, guilty or not guilty?

24              THE DEFENDANT:   Guilty.

25              THE COURT:   All right.   Based upon your responses to

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1 my questions and my observations of your demeanor, I find that  
2 you know your rights, you know the consequences of pleading  
3 guilty, and there's a factual basis for your plea of guilty.  
4 Your plea of guilty is accepted.

5 Further, I find your plea agreement was knowingly and  
6 voluntarily and intelligently entered into, including the  
7 provision waiving your right to appeal or collaterally attack  
8 the sentence under specified circumstances.

9 I'm going to order a presentence investigation and  
10 report and direct that no interview take place unless your  
11 lawyer is present. It's important that you be candid, honest  
12 and truthful with the people who prepare the report because the  
13 report will be important in my decision on sentencing.

14 I left one thing out. With regard to the forfeiture  
15 allegations in paragraphs 14 and 16 of the superseding  
16 indictment, do you admit them or do you deny them?

17 THE DEFENDANT: I admit.

18 THE COURT: All right. Thank you.

19 So, the report will be prepared by the office of  
20 probation. Before the day of sentencing, you will have the  
21 opportunity to review it. I urge you to do so carefully. If  
22 there are any mistakes, point them out to your lawyer so he can  
23 point them out to me.

24 Sentencing in this case is set for October 19, 2021,  
25 at 2:00 p.m., and defendant is remanded until then.

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1 Is there anything further from the government?

2 MS. MURRAY: No, your Honor. Thank you.

3 THE COURT: From you, Mr. Pope?

4 MR. POPE: No, your Honor.

5 THE COURT: From you, Mr. Buza?

6 MR. BUZA: Just to inquire if there's anything else  
7 that the Court requires of me?

8 THE COURT: No, I would say that, with this assignment  
9 and with the thanks of the Court, you are discharged, and thank  
10 you.

11 MR. BUZA: Thank you, your Honor.

12 THE COURT: All right. We are adjourned.

13 (Adjourned)

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